

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5195 of 1998

For Approval and Signature:

Hon'ble MR. JUSTICE D.C. SRIVASTAVA

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge, 2, 3

DHARMENDRA ALTAS DHARMO TNDRAVADAN VYAS

TNDRAVADAN VYAS

## Versus

COMMISSIONER OF POLICE

### Appearance:

MR ANIL S DAVE for Petitioner

MS Shraddha Talati, Addl. GOVERNMENT PLEADER for Respondent No. 1.

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CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 29/12/98

## ORAL JUDGEMENT

In this petition under Article 226 of the Constitution of India, the order dated 20.6.1998 passed by the Commissioner of Police, Ahmedabad city under section 3(2) of the Prevention of Anti-social Activities Act. ('PASA')

is under challenge.

The detaining authority considering the four registered cases against the petitioner under the Bombay Prohibition Act and also on considering the statements of two confidential witnesses, reached subjective satisfaction that the petitioner is a bootlegger and his activities are prejudicial for maintenance of public order. Accordingly, the impugned order was passed which is under challenge. In the course of arguments, only one ground was raised that the representation of the detenu sent on 29.6.1998 through his advocate was not considered by the State Government, rather it was returned with an endorsement that the signature of the detenu be obtained on the representation and be sent again for consideration. Thereafter, the representation was not submitted again by the advocate of the detenu.

The contention has been that since the representation was sent by the advocate of the detenu under the instructions and authority of the detenu, the signature of the detenu on the representation was not required and the State Government was obliged to consider the representation on merits and its action of returning the representation with technical objection has rendered the detention as well as continued detention of the detenu illegal. In support of his contention, learned advocate for the detenu has relied upon the Apex court's verdict in *Balchand Chorasia vs. Union of India*, AIR 1978 SC 297. In this case, the Apex court observed that if representation is sent by the advocate of the detenu under instructions from the detenu, the concerned authority should have dealt with the representation on merits and should not have dealt with the same on technical grounds. The Apex court emphasised that in such matters, representation should not be technically dealt with because valuable right of the petitioner is going to be violated.

For the reasons stated above, I am of the view that the action of the State Government in not considering the representation of the detenu on merits, but returning the same with a desire for certain compliances was totally uncalled for and has rendered the detention of the petitioner as well as his continued detention illegal.

No other point was pressed. Writ petition, therefore, succeeds and is hereby allowed. The detention order dated 20.6.1998 as contained in Annexure 'A' is quashed. The detenu shall be released from custody forthwith unless wanted in some other case.

